

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 NORMAN BEER, *
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 Appellant, *
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 v. *
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 DEPARTMENT OF HEALTH AND SOCIAL *
 SERVICES, *
 *
 Respondent. *
 *
 Case No. 79-198-PC *
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 * * * * *

INTERIM
DECISION

NATURE OF THE CASE

This case is an appeal of a termination of a probationary employe, in which appellant alleges jurisdiction pursuant to the terms of the collective bargaining agreement negotiated by the state, Wisconsin State Employes Union (WSEU), the American Federation of State, County and Municipal Employes (AFSCME). Respondent objects to subject matter jurisdiction. The objection is purely one of law and was argued in briefs submitted to the Commission.

FINDINGS OF FACT

1. Appellant is a state employe who was terminated from a probationary term of employment as a Vocational Counselor 1 and was reinstated as a Client Services Assistant IV, all within the Division of Vocational Rehabilitation in the Department of Health and Social Services.

OPINION

The appeal rights of probationary employes have been clearly delineated in several Commission decisions, most notably in In Re Request of AFSCME, Council 24, WSEU, AFL-CIO, for a Declatory Ruling, Case No.

75-206, Pers. Bd. 8/76, and Dziadosz, Davies, Ocon, and Kluga v. DHSS, Case Nos. 78-32-PC, 78-89-PC, 78-108-PC, and 78-37-PC, Pers. Comm. 10/78. These cases hold that the collective bargaining agreement provision upon which appellant here relies does confer jurisdiction upon the Commission because the provision is the valid result of collective bargaining specifically permitted by authority of s. 111.91(3), Wis. Stats.

Respondent argues, perhaps in anticipation of the above statement of probationary employe rights, that at a minimum the language of s. 111.91(2) and (3) must be read to exclude appeal rights with respect to termination. Section 111.91(2)(b)1, Wis Stats. refers to:

(b) Policies, practices and procedures of the civil service merit system relating to:

1. Original appointments and promotions specifically including recruitment, examinations, certification, appointments, and policies with respect to probationary periods.

Respondent argues that all language in the sentence modifies and is limited by the term "original appointments and promotions," and that termination decisions are not part of policies, practices and procedures relating to original appointments and promotions. Several factors combine to defeat respondent's arguments. First of all, probationary periods are part of original appointments and promotions, s. 230.28(1)(a), Wis. Stats. Termination at any time during the period is part of the policy and practice and procedure with respect to probation. Secondly, the language of s. 111.91(2)(b)1, particularly the phrase "specifically including" indicates an intent to set out certain examples of included items without excluding from consideration all other items or issues. The word "including" merely focuses attention on certain elements of a larger whole,

without excluding the rest of the elements which comprise the larger whole. Termination of probationary employment has been and continues to be appealable to the Commission.

An additional basis for Commission jurisdiction of this appeal is set forth in Wagaman v. DHSS, 79-141-PC, 9/79. The Commission in Wagaman held as a matter of law that termination of probation is a "personnel action after certification which is related to the hiring process," and therefore is appealable under s.230.44(1)(d), Wis. Stats.

CONCLUSIONS OF LAW

1. That ss. 111.91(2)(b)1 and (3), Wis. Stats., operate to confer jurisdiction upon the Personnel Commission to hear appeals from terminations of probationary employes, where a collective bargaining agreement meets the conditions set forth in s. 111.91(3), Wis. Stats.

2. Appellant is an individual employe whose employment situation meets the requirements for Personnel Commission jurisdiction of his appeal of the termination of his probationary employment.

3. The Personnel Commission has subject matter jurisdiction of this appeal.

ORDER

The objections of respondent to the subject matter jurisdiction of the Commission is overruled.

Dated Dec. 13, 1979

STATE PERSONNEL COMMISSION

AR:mgd

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner